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April 18, 2017

BY ECF

The Honorable Deborah A. Batts
United States District Court for the
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: CP III Rincon Towers, Inc. v. Cohen, No. 10-cv-04638 (DAB)

Dear Judge Batts:

The undersigned counsel for Richard D. Cohen (“Defendant”) and CP III Rincon Towers, Inc. (“CP III” or “Plaintiff,” and together with Defendant, the “Parties”) jointly write to request an adjournment of the Parties’ May 1, 2017 deadline — set forth in this Court’s February 28, 2017 order (Dkt. No. 113) — to submit a Joint Pre-trial Statement (“JPTS”) and accompanying Memoranda of Law to June 16, 2017, approximately three weeks after the Parties anticipate a decision by the California Supreme Court as to whether to grant a Petition for Review filed in the related California state court litigation, and to adjourn the deadline for responses to the Memoranda of Law from May 22, 2017 to July 12, 2017. In addition, the Parties respectfully request a pre-trial conference with the Court at the Court’s earliest convenience so the Court can provide direction to the Parties with how they should proceed in light of how certain issues in the ongoing California litigation may affect this case.

The Parties have exchanged drafts of the JPTS and have engaged in multiple good-faith discussions regarding the JPTS. In the course of those discussions, the Parties have recognized that the resolution of certain issues in the related California action and what, if any, preclusive effect that resolution has in this action could significantly affect the scope and length of the trial in this case.

As the Court may recall, this is a lawsuit against Richard D. Cohen personally that seeks to recover under a guaranty. Mr. Cohen entered into the guaranty in connection with a \$110

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million loan between Bear Stearns Commercial Mortgage, Inc., as lender, and Rincon EV Realty, LLC, Rincon ET Realty, and Rincon Residential LLC (collectively, the “Borrowers”).

The Borrowers filed a lawsuit in California state court related to the alleged breaches of the loan documents. The Fifth Amended Complaint in the that case stated causes of action for breach of contract, fraud, violation of the California Uniform Trade Secrets Act (“CUTSA”), violation of California Business & Professions Code §§17200 et seq. (“UCL”), and sought to set aside the foreclosure and obtain an accounting. By decision dated January 31, 2017, the California Court of Appeal, First Appellate District, Division Four, affirmed the judgment entered in favor of CP III on the Borrowers’ claims to set aside the non-judicial foreclosure, for an accounting, and for violation of the UCL (collectively, the “Equitable Claims”). However, the Court reversed the judgment in favor of CP III on Borrowers’ claims for breach of contract, fraud, and violation of the CUTSA. Borrower has petitioned for review of the Equitable Claims in the California Supreme Court. The Parties expect the California Supreme Court to decide whether it will grant the petition on or around May 13, 2017.

If the Court desires the Parties proceed with a single trial addressing both damages and liability (as opposed to bifurcating those issues), there are certain issues relevant to this litigation that will be affected by the ongoing California litigation. The most notable issues relate to (i) the Plaintiff’s claimed damages, which include a claim for an award of attorneys’ fees and costs that is currently awaiting adjudication before the California Court of Appeal, First Appellate Department, and (ii) the maturity date of the underlying loan, which affects the amount of interest Plaintiff claims is owed as part of its damages calculation. If the California Supreme Court denies the Borrower’s petition for review, Plaintiff’s counsel has indicated its belief that certain issues in the Equitable Claims have preclusive effect on certain issues in this case, which Defendant may dispute, requiring this Court’s resolution of that issue prior to trial.

The Parties believe that a pre-trial conference to more fully discuss these issues with the Court and obtain the Court’s direction would be beneficial. The ultimate resolution of the ongoing appeals in the related California litigation and a determination of what, if any, preclusive effect those determinations have in this case has the potential to affect both the scope and the duration of the trial, as well as the facts and exhibits that are included in the JPTS. In light of these issues, the Parties wish to receive direction from the Court on how the Court desires them to proceed and address these issues. Additionally, the Parties wish to obtain the Court’s direction on how certain requirements contained within Section IV of the Court’s Individual Rules of Practice apply to this case in light of the fact it is a bench trial (*i.e.*, whether the JPTS should include a brief list of issues of law to be decided by the Court, whether the exhibit lists submitted with the JPTS must include exhibits to be offered during cross-examination or for impeachment purposes, and the nature of the facts to be included in the undisputed facts section).

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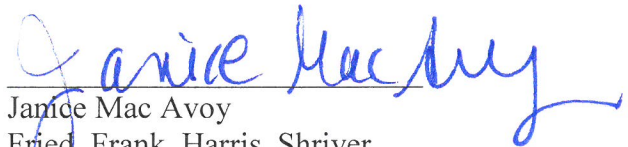
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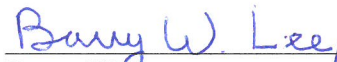
For these reasons, the Parties respectfully request that the Court schedule a pre-trial conference at its earliest convenience and grant an extension of the time to file the JPTS and accompanying Memoranda of Law to June 16, 2017, and until July 12, 2017 to file responsive Memoranda of Law. This is the Parties' first request for an extension of time related to the Court's February 28, 2017 pre-trial schedule.

Respectfully submitted,



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